

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Gene W. Wu, M.D.

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Docket No. MPS 65-0603

SECOND AGREEMENT AS TO MEDICAL PRACTICE

NOW COME Gene W. Wu, M.D., (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General James S. Arisman, and agree and stipulate as follows:

1. Gene W. Wu, M.D., holds Vermont Medical License Number 042-0009913, issued by the Board of Medical Practice on August 24, 1999. Respondent, an anesthesiologist, holds privileges at the Copley Hospital of Morrisville, Vermont.

2. Jurisdiction vests with the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. § 1353 and other provisions of Chapter 23 of the Vermont statutes.

I. Background.

3. Respondent took a voluntarily leave of absence from practice activities in June 2003, due to medical disability. Respondent subsequently signed a Cessation of Practice Agreement with the Vermont Board of Medical Practice, entered and effective August 6, 2003, due to his medical disability and ongoing treatment. Respondent's medical condition improved, and he resume limited practice responsibilities in September, pursuant to terms approved by the Board on September 3, 2003 (hereinafter referred to as the September 3, 2003 Agreement).

4. Based on his current medical condition, his treatment needs, the advice of his treating doctors, and his concern for the welfare of his patients, Respondent has determined after consultation with his colleagues that he now shall voluntarily enter into this second practice agreement with the Vermont Board of Medical Practice.

5. The instant agreement is intended to amend the terms of Respondent Wu's September 3, 2003 Agreement with the Board to provide, *inter alia*, for expansion of the number of hours each week that Dr. Wu will be able to practice. Such expansion of hours is based on Dr. Wu's performance of duties since his limited return to work in early September 2003.¹ Those monitoring Dr. Wu's performance, pursuant to the terms of his September 3, 2003 Agreement with the Board, have expressed no concerns regarding patient safety or quality of care. His intra-operative skills and decision-making have been reported to be at the appropriate level of performance. His peers have indicated their concurrence with regard to plans for "Dr. Wu's progressive return to independent practice."

6. Dr. Wu has requested that he be permitted to increase the number of hours he may work each week. He has met and communicated with administrators for Copley Hospital regarding a plan for increasing his hours of work and allowing him to practice more independently. Dr. Wu and his colleagues concur that such steps will be consistent with patient safety and Dr. Wu's continued medical progress and well-being. Respondent Wu, therefore, has determined that he will enter into this agreement with the Vermont Board of Medical Practice so as to set forth in writing amended terms for continuing his limited return to the practice of medicine.

1. During his limited return to work all Dr. Wu's practice activities have been directly observed by the chief of anesthesiology for Copley Hospital.

7. Respondent acknowledges that he has been offered the opportunity to obtain an attorney and receive legal advice and counsel regarding this matter. Respondent voluntarily and knowingly is agreeing to the terms and conditions set forth herein.

8. In the unlikely event that circumstances may require such action, Respondent expressly agrees and reiterates here that upon any written request to him by the Vermont Board of Medical Practice he shall immediately cease and desist from any and all practice of medicine and any and all prescribing, no matter how limited and regardless of location. Any such request may be made by the Board, in its sole discretion, at any time, and for such reasons, if any, as the Board may deem sufficient in its sole discretion.

II. Amended Conditions of Licensure.

9. Respondent's Vermont license to practice medicine has been designated as "CONDITIONED" pursuant to the terms and conditions of the September 3, 2003 Agreement. The terms and conditions of that agreement now shall be amended as set forth below. All other provisions of that agreement remain unchanged and unaffected.

10. Paragraph 15 of the September 3, 2003 Agreement shall be amended to read as follows:

Pursuant to the terms of this amended agreement Respondent may initially return to the practice of medicine on a limited basis. The parties agree that such practice by Respondent shall not exceed a total of ~~six~~ *twenty-four* hours per week, regardless of location. The parties agree that the total number of hours to be worked shall not require Dr. Wu to be present at the hospital in excess of ~~three~~ *four* days per week. ~~Following Respondent's initial return to practice, he agrees that he shall~~

~~not practice absent the immediate presence of another licensed physician.~~ *Respondent shall practice anesthesiology only while a second board-certified anesthesiologist is physically present in the operating room suite and available to provide such assistance or intervention, if any, as may be required. Any such occurrence shall be reported immediately in writing to the Board.* The parties agree to review the terms set forth forth in this paragraph from time to time.

Language that is to be deleted is struck through. Language that has been added appears in italics.

11. Paragraph 23 of the September 3, 2003 Agreement shall be amended to read as follows:

Respondent agrees to propose by petition the name of a physician who will serve as a consultant practitioner and who will assist the Supervising Physician by ~~directly observing and~~ monitoring Respondent's care of patients and his ability to practice medicine safely. *Such monitoring shall include from time to time direct observation of Respondent's practice of anesthesiology. All controlled substances issued for use by Respondent in the operating room, or available to him for such use, shall be checked daily by the Copley Hospital pharmacist against the record of those substances as they were prescribed by the anesthesiologist in the operating room. Any questions, concerns, or apparent discrepancies shall be immediately resolved by the Copley Hospital medical director.* Respondent expressly understands and agrees that the *Vermont Board of Medical Practice*, in its sole discretion, may withdraw its approval of any such arrangement at any time. Such consultant, if approved, shall communicate regularly and directly with the Supervising Physician regarding Respondent's ability to practice medicine and to do so safely. Respondent agrees that the Board may communicate with any such consultant practitioner freely and at any time regarding Respondent's care of patients and ability to practice medicine safely. The proposed consultant practitioner shall be considered provisionally

approved for the period of time between the filing of the petition and the Board's
the Board's 's actual approval or denial of the petition.

Language that is to be deleted is struck through. Language that has been added appears in
italics.

12. Paragraph 29 of the September 3, 2003 Agreement shall be amended to add
the following as the final sentence of Paragraph 29:

*Respondent agrees to continue to adhere fully to the terms of any assurances
previously provided by him and also to the terms of any practice agreements or
contracts he has executed with Copley Hospital. The parties expressly agree
that the terms of Paragraph 23, as amended above, shall prevail with regard to
the presence of the Board-certified anesthesiologist who is acting as a consultant
practitioner pursuant to the terms of that paragraph.*

Language that has been added appears in italics.

13. Respondent agrees that he has read and carefully considered all terms and
conditions herein and agrees that these may be adopted and are enforceable as an order of the
Board, pursuant to 3 V.S.A. § 809(d) and 26 V.S.A. § 1353(4). He agrees to accept and be
bound by these terms and those of the September 3, 2003 Agreement, as amended, until such
time as he may be expressly relieved of these or they are modified in writing by the Board.

14. This Second Agreement as to Medical Practice is subject to review and
acceptance by the Vermont Board of Medical Practice and shall not become effective until
presented to and approved by the Board. If the Board rejects any part of the instant
agreement, the entire Second Agreement as to Medical Practice shall be considered void.
However, if this agreement is deemed acceptable, the parties request that the Board enter an
order adopting the terms and conditions set forth herein. Respondent agrees that the Board

of Medical Practice shall retain jurisdiction in this matter and may enforce as necessary the terms and conditions herein, pursuant to 26 V.S.A. §1354(25) or other statutory authority.

Dated at Montpelier, Vermont, this 25th day of September, 2003.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at MONTPELIER Vermont, this 25 day of SEPT., 2003.

Gene W. Wu, M.D.
GENE W. WU, M.D.
Respondent

FOREGOING, AS TO GENE W. WU, M.D.,
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

James S. Arisman James Young
James S. Arisman
James S. Arisman
James S. Arisman
James S. Arisman
James S. Arisman
James S. Arisman

DATED: _____

ENTERED AND EFFECTIVE: _____